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**OFFICE OF PETITIONS
ON PETITION**

In re Application of
Schaekers et al.
Application No. 10/733,907
Filed: December 11, 2003
Attorney Docket No. 10908/6

This is a decision on the petition filed May 21, 2004, requesting entry of Figure 8 submitted on May 21, 2004.

The petition is **dismissed**.

As discussed later in this decision, a corrected drawing sheet containing Figure 7 must be filed within two months of the mailing date of this decision or the application will become abandoned. The two month time period may be extended under 37 CFR 1.136(a).

On December 11, 2003, the application was filed.

On March 19, 2004, the Office of Initial Patent Examination mailed a Notice stating that Figure 8 of the drawings was missing.

Petitioner seeks to add Figure 8 to the application in reliance on an incorporation by reference.

The Office allows an applicant to rely upon an incorporation by reference of another application when a portion of the child application has been inadvertently omitted.

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. ...

If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s). If the application as originally filed includes a proper incorporation by reference of the prior application(s), an omitted specification page(s) and/or drawing figure(s) identified in a "Notice of Omitted Item(s)" may be added by amendment provided the omitted item(s) contains only subject matter in common with such prior application(s). In such case, applicant need not respond to the "Notice of Omitted Item(s)." Applicant should submit

the amendment adding the omitted material prior to the first Office action to avoid delays in the prosecution of the application. See MPEP § 601.01(d) and § 601.01(g).

If petitioner desires for the examiner to consider the missing pages which were not submitted as part of the original disclosure, then petitioner may submit those pages as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a). The amendment is not new matter if the substance was a part of the disclosure of the prior application.

Figure 8 submitted with the petition will not be entered. Should petitioner wish for Figure 8 to be entered, an amendment must be filed.


The original application papers will include only those application papers present on the date of deposit.

Since the present petition was not necessitated by any error on the part of the Office, the \$130.00 petition fee will not be refunded.

The Office notes the Notice required the submission of corrected drawings. The corrected sheet containing Figure 7 impermissibly includes Figure 8. Therefore, a corrected sheet containing Figure 7, which can be used for prosecution, has not been filed. A new corrected drawing sheet containing only Figure 7 must be filed. Petitioner may file a preliminary amendment along with Figure 8 on separate sheets of paper. The corrected sheet must be filed within two months of the mail date of this decision. The time period may be extended under the provisions of 37 CFR 1.136(a). Failure to timely file the new drawing will result in the abandonment of the application.

The Office of Initial Patent Examination will be informed of this decision and will await the filing of a new Figure 7.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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Office of Petitions